



# House of Representatives

General Assembly

**File No. 194**

February Session, 2008

Substitute House Bill No. 5157

*House of Representatives, March 26, 2008*

The Committee on Insurance and Real Estate reported through REP. O'CONNOR of the 35th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE MARKETING OF MEDICAL DISCOUNT PLANS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-479qq of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) As used in this section and section 38a-479rr, as amended by this  
4 act:

5 (1) "Affiliate" means a person that directly or indirectly through one  
6 or more intermediaries, controls, or is controlled by, or is under  
7 common control with, a health insurer, health care center, hospital  
8 service corporation, medical service corporation or fraternal benefit  
9 society licensed in this state;

10 (2) "Consumer" means: (A) A person to whom a medical discount  
11 plan is marketed or advertised, or (B) a member, as defined in this  
12 subsection;

13     (3) "Marketer" means a person that markets, advertises or sells a  
14 medical discount plan, including, but not limited to, an entity that  
15 markets, advertises or sells a medical discount plan under its own  
16 name;

17     ~~[(3)]~~ (4) "Medical discount plan" means a business arrangement or  
18 contract in which a person, in exchange for payment, provides access  
19 for its members to providers of health care services and the right to  
20 receive health care services from those providers at a discount.  
21 "Medical discount plan" does not include a product that (A) is  
22 otherwise subject to regulation or approval under this title, or (B) costs  
23 less than twenty-five dollars, annually, in the aggregate;

24     ~~[(4)]~~ (5) "Medical discount plan organization" means a person that  
25 (A) establishes a medical discount plan, (B) contracts with providers,  
26 provider networks or other medical discount plan organizations to  
27 provide health care services at a discount to medical discount plan  
28 members, and (C) determines the fees charged to the members for the  
29 medical discount plan. "Medical discount plan organization" does not  
30 include a health insurer, health care center, hospital service  
31 corporation, medical service corporation or fraternal benefit society  
32 licensed in this state or any affiliate of such health insurer, health care  
33 center, hospital service corporation, medical service corporation or  
34 fraternal benefit society;

35     ~~[(5)]~~ (6) "Health care services" means any care, service or treatment  
36 of an illness or dysfunction of, or injury to, the human body. "Health  
37 care services" includes physician care, inpatient care, hospital surgical  
38 services, emergency medical services, ambulance services, dental care  
39 services, vision care services, mental health care services, substance  
40 abuse services, chiropractic services, podiatric services, laboratory test  
41 services and the provision of medical equipment or supplies. "Health  
42 care services" does not include pharmaceutical supplies or  
43 prescriptions;

44     ~~[(6)]~~ (7) "Member" means an individual who pays for the right to  
45 receive the benefits of a medical discount plan; and

46        [(7)] (8) "Person" means a person, as defined in section 38a-1.

47        (b) No person [may] shall market, advertise or sell to a resident of  
48 this state a medical discount plan or any plan material that: (1) Fails to  
49 provide to the consumer a clear and conspicuous disclosure that the  
50 medical discount plan is not insurance and that the plan only provides  
51 for discounted health care services from participating providers within  
52 the plan; (2) uses in its marketing materials, advertisements, brochures  
53 or member discount cards the term "insurance", "health plan",  
54 "coverage", "copay", "copayments", "preexisting conditions",  
55 "guaranteed issue", "premium", "PPO", "preferred provider  
56 organization" or any other term that could reasonably mislead a  
57 person into believing the medical discount plan is insurance, except  
58 that such terms may be used as a disclaimer of any relationship  
59 between the medical discount plan and insurance; (3) fails to provide  
60 the name, address and telephone number of the administrator of the  
61 medical discount plan; (4) fails to make available to the consumer  
62 through a toll-free telephone number, upon request of the consumer, a  
63 complete and accurate list of the participating providers within the  
64 plan in the consumer's local area and a list of the services for which the  
65 discounts are applicable; (5) fails to make a printed copy of such list  
66 available to the consumer upon request commencing with the time the  
67 plan is purchased or fails to update the list at least once every six  
68 months; (6) fails to use plain language to describe the discounts or  
69 access to discounts offered and such failure results in representations  
70 of the discounts that are misleading, deceptive or fraudulent; (7) fails  
71 to provide the consumer notice of the right to cancel such medical  
72 discount plan; (8) offers discounted health care services or products  
73 that are not authorized by a contract with each provider listed in  
74 conjunction with the medical discount plan; (9) fails to allow a  
75 consumer to cancel a medical discount plan not later than thirty days  
76 after the date payment is received by the medical discount plan; (10)  
77 with respect to a consumer who cancels a medical discount plan  
78 pursuant to subdivision (9) of this subsection, fails to guarantee a  
79 refund of all membership fees paid to the medical discount plan by the  
80 consumer, excluding a reasonable one-time processing fee, not later

81 than thirty days after the member gives timely notification of  
82 cancellation of the plan to the medical discount plan organization; or  
83 (11) fails to (A) provide at least one member discount card for each  
84 member as proof of membership, and (B) prominently display on such  
85 member discount card a statement that the medical discount plan is  
86 not insurance.

87 (c) Any person who knowingly operates as a medical discount plan  
88 organization in violation of this section shall be fined not more than  
89 ten thousand dollars. Any person who knowingly aids and abets  
90 another that the person knew or reasonably should have known was  
91 operating as a medical discount plan organization in violation of this  
92 section shall be fined not more than ten thousand dollars.

93 (d) Any person who collects fees for purported membership in a  
94 medical discount plan but fails to provide the promised benefits shall  
95 be subject to the penalties for larceny under sections 53a-122 to 53a-  
96 125b, inclusive, depending on the amount involved.

97 (e) Any person licensed in this state as a health insurer, health care  
98 center, hospital service corporation, medical service corporation or  
99 fraternal benefit society, or any affiliate owned or controlled by such  
100 health insurer, health care center, hospital service corporation, medical  
101 service corporation or fraternal benefit society, may offer medical  
102 discount plans in this state pursuant to such licensure.

103 Sec. 2. Section 38a-479rr of the general statutes is repealed and the  
104 following is substituted in lieu thereof (*Effective October 1, 2008*):

105 (a) Before doing business in this state as a medical discount plan  
106 organization, an entity shall:

107 (1) Be a corporation, limited liability company, limited liability  
108 partnership, or other legal entity organized under the laws of this state  
109 or, if a foreign corporation or other foreign entity, authorized to  
110 transact business in this state; and

111 (2) Obtain a license as a medical discount plan organization from

112 the Insurance Commissioner in accordance with this section. The entity  
113 shall file an application for a license to operate as a medical discount  
114 plan organization with the commissioner on such form as the  
115 commissioner prescribes. Such application shall be sworn to by an  
116 officer or authorized representative of the applicant, under penalty of  
117 false statement, and be accompanied by (A) a copy of the applicant's  
118 articles of incorporation, including all amendments; (B) a copy of the  
119 applicant's bylaws; (C) a list of the names, addresses, official positions  
120 and biographical information of the medical discount plan  
121 organization and the individuals who are responsible for conducting  
122 the applicant's affairs, including, but not limited to, all members of the  
123 board of directors, board of trustees, executive committee, or other  
124 governing board or committee, the officers, contracted management  
125 company personnel, and any person or entity owning or having the  
126 right to acquire ten per cent or more of the voting securities of the  
127 applicant, which listing shall fully disclose the extent and nature of any  
128 contracts or arrangements between the applicant and any individual  
129 who is responsible for conducting the applicant's affairs, including any  
130 possible conflicts of interest; (D) for each individual listed in  
131 subparagraph (C) of this subdivision as being responsible for  
132 conducting the applicant's affairs, a complete biographical statement  
133 on forms prescribed by the commissioner; (E) a statement generally  
134 describing the applicant, its personnel and the health care services to  
135 be offered; (F) a copy of the form of all contracts made or to be made  
136 between the applicant and any providers or provider networks  
137 regarding the provision of health care services to members; (G) a copy  
138 of the form of any contract made or to be made between the applicant  
139 and any person listed in subparagraph (C) of this subdivision; (H) a  
140 copy of the form of any contract made or to be made between the  
141 applicant and any person for the performance on the applicant's behalf  
142 of any function, including, but not limited to, marketing,  
143 administration, enrollment and subcontracting for the provision of  
144 health care services to members; (I) a copy of the applicant's most  
145 recent financial statements audited by an independent certified public  
146 accountant, or, in the case of an applicant that is a subsidiary of a

147 person or parent corporation that prepares audited financial  
148 statements reflecting the consolidated operations of the person or  
149 parent corporation, a copy of the person's or parent corporation's most  
150 recent financial statements audited by an independent certified public  
151 accountant, provided the person or parent corporation also issues a  
152 written guarantee that the minimum capital requirements of the  
153 applicant required by this section will be met; (J) a description of the  
154 proposed method of marketing; (K) a description of the subscriber  
155 complaint procedures to be established and maintained; [and] (L) the  
156 fee for a medical discount plan organization license set forth in section  
157 38a-11 of the 2008 supplement to the general statutes; and (M) a list of  
158 the names, addresses and telephone numbers of the marketers the  
159 applicant has authorized to market a medical discount plan in this  
160 state under a name that is different from the name of the applicant. For  
161 purposes of this subdivision, a "contract to be made" shall be  
162 determined based on the information known to the applicant on the  
163 date the information is filed with the commissioner.

164 (b) (1) A current and accurate list of authorized marketers, specified  
165 in subparagraph (M) of subdivision (2) of subsection (a) of this section,  
166 shall be submitted to the commissioner with each renewal fee, as set  
167 forth in subsection (c) of this section.

168 (2) Any change made to the list of authorized marketers, specified in  
169 subparagraph (M) of subdivision (2) of subsection (a) of this section,  
170 shall be electronically filed with the commissioner. If such change is to  
171 add a marketer to a medical discount plan organization's list of  
172 authorized marketers, such change shall be electronically filed by such  
173 organization prior to the marketer doing business in the state for such  
174 organization.

175 (3) The commissioner may adopt regulations, in accordance with  
176 chapter 54, to establish the procedure and format of the electronic  
177 filing and acknowledgment set forth in this subsection.

178 [(b)] (c) If the commissioner finds that the applicant is in compliance  
179 with the requirements of this section the commissioner shall issue the

180 applicant a license as a medical discount plan organization which shall  
181 expire one year after the date of issue. The commissioner shall renew  
182 the license if the commissioner finds that the licensee is in compliance  
183 with the requirements of this section and the licensee has paid the  
184 renewal fee set forth in section 38a-11 of the 2008 supplement to the  
185 general statutes.

186 [(c)] (d) Prior to applying for a license from the commissioner, a  
187 medical discount plan organization shall establish an Internet web site  
188 that contains the information described in subsection [(r)] (s) of this  
189 section.

190 [(d)] (e) Any license or renewal fee received pursuant to this section  
191 shall be deposited in the Insurance Fund established in section 38a-52a.

192 [(e)] (f) Nothing in this section shall require a provider who  
193 provides discounts to the provider's own patients to obtain or maintain  
194 a license as a medical discount plan organization.

195 [(f)] (g) Each provider who offers health care services to members  
196 under a medical discount plan shall provide such services pursuant to  
197 a written agreement. The agreement may be entered into directly by  
198 the provider or by a provider network to which the provider belongs.

199 [(g)] (h) A provider agreement shall include: (1) A list of the services  
200 and products to be provided at a discount; (2) the amount of the  
201 discounts or, alternatively, a fee schedule that reflects the provider's  
202 discounted rates; and (3) a requirement that the provider will not  
203 charge members more than the discounted rates.

204 [(h)] (i) A provider agreement between a medical discount plan  
205 organization and a provider network shall require that the provider  
206 network have written agreements with its providers that: (1) Contain  
207 the terms set forth in subsection [(g)] (h) of this section; (2) authorize  
208 the provider network to contract with the medical discount plan  
209 organization on behalf of the provider; and (3) require the network to  
210 maintain an up-to-date list of its contracted providers and to provide

211 that list on a quarterly basis to the medical discount plan organization.  
212 No medical discount plan organization may enter into or renew a  
213 contractual relationship with a provider network that is not licensed in  
214 accordance with section 38a-479aa of the 2008 supplement to the  
215 general statutes.

216 [(i)] (j) The medical discount plan organization shall maintain a  
217 copy of each active agreement that it has entered into with a provider  
218 or provider network.

219 [(j)] (k) Each medical discount plan organization shall at all times (1)  
220 maintain a net worth of at least two hundred fifty thousand dollars, or  
221 (2) post a surety bond in the amount of one hundred thousand dollars.

222 [(k)] (l) The commissioner [may] shall not issue or renew a license  
223 under this section unless the medical discount plan organization has  
224 (1) a net worth of at least two hundred fifty thousand dollars, or (2)  
225 posted a surety bond in the amount of one hundred thousand dollars.

226 [(l)] (m) The commissioner may suspend the authority of a medical  
227 discount plan organization to enroll new members, revoke any license  
228 issued to a medical discount plan organization, refuse to renew a  
229 license of a medical discount plan organization or order compliance if  
230 the commissioner finds that any of the following conditions exist:

231 (1) The organization is not operating in compliance with this section  
232 or section 38a-479qq, as amended by this act;

233 (2) The organization does not have the minimum net worth required  
234 by this section;

235 (3) The organization has advertised, sold or attempted to sell its  
236 services in such a manner as to misrepresent its services or capacity for  
237 service or has engaged in deceptive, misleading or unfair practices  
238 with respect to advertising or sales;

239 (4) The organization is not fulfilling its obligations as a medical  
240 discount plan organization; or



241 (5) The continued operation of the medical discount plan  
242 organization would be hazardous to its members.

243 [(m)] (n) If the commissioner has reasonable cause to believe that  
244 grounds for the suspension, nonrenewal or revocation of a license  
245 exist, the commissioner shall notify the medical discount plan  
246 organization in writing specifically stating the grounds for suspension,  
247 nonrenewal or revocation.

248 [(n)] (o) When the license of a medical discount plan organization is  
249 surrendered, nonrenewed or revoked, the organization shall,  
250 immediately following the effective date of the order, wind up and  
251 settle the affairs transacted under the license. The organization [may]  
252 shall not engage in any further marketing, advertising, sales, collection  
253 of fees or renewal of contracts as a medical discount plan organization,  
254 and its authorized marketers shall not engage in any further  
255 marketing, advertising or sales on behalf of such medical discount plan  
256 organization.

257 [(o)] (p) The commissioner shall, in any order suspending the  
258 authority of a medical discount plan organization to enroll new  
259 members, specify the period during which the suspension is to be in  
260 effect and the conditions, if any, which must be met by the medical  
261 discount plan organization prior to reinstatement of its license to enroll  
262 new members. The commissioner may rescind or modify the order of  
263 suspension prior to the expiration of the suspension period.

264 [(p)] (q) The commissioner [may] shall not reinstate a license: (1)  
265 Unless reinstatement is requested by the medical discount plan  
266 organization, and (2) if the commissioner finds that the circumstances  
267 which led to the suspension still exist or are likely to recur.

268 [(q)] (r) Each medical discount plan organization shall provide the  
269 commissioner at least thirty days' advance written notice of any  
270 change in the medical discount plan organization's name, address,  
271 principal business address or mailing address.

272        [(r)] (s) Each medical discount plan organization shall maintain an  
273 up-to-date list of the names and addresses of the providers with which  
274 it has contracted on an Internet web site, the address of which shall be  
275 prominently displayed on all its marketing materials, advertisements,  
276 brochures and member discount cards. The list shall include providers  
277 with whom the medical discount plan organization has contracted  
278 directly as well as providers who will provide services to the  
279 organization's members as part of a provider network with which the  
280 medical discount plan organization has contracted.

281        [(s)] (t) Each medical discount plan organization shall (1)  
282 prominently display on any member discount card the names or  
283 identifying logos or trademarks of any provider networks with whom  
284 the medical discount plan organization has a contract, and (2) provide  
285 the names of such provider networks to members upon request.

286        (u) No marketer shall market, advertise or sell to a resident of this  
287 state a medical discount plan under a name that is different than the  
288 medical discount plan organization's name unless: (1) The medical  
289 discount plan organization has obtained a license from the Insurance  
290 Commissioner in accordance with this section; (2) the marketer is listed  
291 on such medical discount plan organization's list of authorized  
292 marketers as set forth in subparagraph (M) of subdivision (2) of  
293 subsection (a) or subsection (b) of this section; (3) the name, address  
294 and telephone number of the medical discount plan organization  
295 appears on the plan materials; and (4) the marketer does not contract  
296 directly with providers or provider networks. A marketer shall not be  
297 required to obtain a license from the commissioner.

298        (v) A medical discount plan organization may market directly or  
299 contract with marketers for the distribution of a medical discount plan.  
300 The medical discount plan organization shall execute a written  
301 agreement with a marketer and comply with the requirements set forth  
302 in subparagraph (M) of subdivision (2) of subsection (a) or subsection  
303 (b) of this section, as applicable, prior to the marketing, advertising or  
304 selling of such medical discount plan by such marketer. Such written

305 agreement shall prohibit the marketer from using any advertising and  
306 marketing materials, including, but not limited to, brochures and  
307 medical discount plan cards, without the written approval of the  
308 medical discount plan organization prior to the usage of such  
309 advertising and marketing materials.

310 (w) Each medical discount plan organization that contracts with a  
311 marketer shall be bound by and responsible for the activities of such  
312 marketer within the scope of the marketer's agency relationship with  
313 the medical discount plan organization.

314 ~~[(t)]~~ ~~(x)~~ The commissioner may adopt regulations, in accordance  
315 with chapter 54, to implement the provisions of this section.

316 ~~[(u)]~~ ~~(y)~~ Any person who violates any provision of this section shall  
317 be fined not more than two thousand dollars.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	38a-479qq
Sec. 2	October 1, 2008	38a-479rr

**INS**            *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Insurance Dept.	IF - Cost	Potential Minimal	Potential Minimal

Note: IF=Insurance Fund

**Municipal Impact:** None

**Explanation**

The bill permits a licensed Medical Discount Plan (MDP) organization to market its plan through a “marketer” and could result in a potential minimal cost to the Department of Insurance (DOI). Depending upon the number of marketers selling MDP's, there may be an increase in DOI consumer complaint activity. The volume of this increased complaint activity is uncertain, but additional resources may be needed to handle these complaints, creating a cost for DOI.

In addition, the bill gives the DOI commissioner the option to adopt regulations to establish the procedures for electronic filing of marketers. It is anticipated that the agency, should it choose to adopt regulations authorized by the bill, can do so within normally budgeted resources.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the volume of consumer complaints related to MDP marketers.

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**OLR Bill Analysis****sHB 5157*****AN ACT CONCERNING THE MARKETING OF MEDICAL DISCOUNT PLANS.*****SUMMARY:**

This bill permits a licensed medical discount plan organization (organization) to market its plan (1) directly or (2) through a marketer with which it has a written agreement. The agreement must prohibit the marketer from using any advertising and marketing material, including brochures and medical discount plan cards, without the organization's prior written approval.

The bill specifies certain operating restrictions for marketers (see below), and it specifies that a marketer is not required to obtain a license from the insurance commissioner.

It requires an organization to provide the commissioner a list of its Connecticut marketers operating under a different name from its own. The list must include the marketers' names, addresses, and telephone numbers, and the organization must submit the list (1) with its license application, (2) with its annual license renewal fee, and (3) electronically anytime the list changes. The bill authorizes the commissioner to adopt regulations establishing an electronic filing and acknowledgement process.

Under the bill, when a marketer acts within the scope of its authority on behalf of an organization, its activities bind and make the organization responsible.

EFFECTIVE DATE: October 1, 2008

**MARKETER DEFINED**

The bill defines marketer as a person that markets, advertises, or sells a medical discount plan, including an entity that markets, advertises, or sells such a plan under its own name.

## **PROHIBITIONS**

The bill prohibits a marketer from marketing, advertising, or selling to Connecticut residents under a name that is different from the organization's name unless (1) the insurance commissioner has licensed the organization; (2) the organization includes the marketer on its list of authorized marketers; (3) the organization's name, address, and telephone number appear on plan material; and (4) the marketer does not contract directly with providers or provider networks. The bill also prohibits a marketer from marketing, advertising, or selling on an organization's behalf after the organization's license has been surrendered, not renewed, or revoked.

The bill prohibits an organization's marketers from doing business in Connecticut until the organization has added the marketer to its authorized marketers list and electronically filed the updated list with the commissioner.

## **BACKGROUND**

### ***Medical Discount Plan***

A medical discount plan is an arrangement or contract that allows people who pay a membership fee access to discounted health care services. It does not include a product (1) already subject to regulation or approval by the insurance commissioner or (2) that costs less than \$25 annually.

A medical discount plan organization is an entity that establishes a medical discount plan, contracts with providers or other medical discount plan organizations to provide discounted health care services to members, and sets the membership fee. A Connecticut-licensed health insurer, HMO, hospital or service corporation, or fraternal benefit society, or an affiliate of any such entity, is not a medical discount organization, but can offer medical discount plans.

***Plan Requirements***

The law prohibits marketing, advertising, or selling a medical discount plan or using plan material that does not meet certain requirements. A plan or plan material must:

1. provide a clear and conspicuous disclosure that the plan is not insurance but only provides for discounted health care services from participating providers;
2. include the plan administrator's name, address, and telephone number;
3. have a toll-free telephone number through which a member can obtain a complete and accurate list of the local participating providers and applicable discounted services;
4. promise that a printed copy of the provider list is available upon request;
5. update the provider list at least once every six months;
6. use plain language that does not lead to a misleading, deceptive, or fraudulent representation of the discounts;
7. provide notice of the consumer's right to cancel the plan within 30 days of the discount health plan's receipt of membership fees for a full refund minus a reasonable processing fee; and
8. guarantee the refund within 30 days of receiving a member's timely cancellation.

The plan or plan material cannot use the term insurance, health plan, coverage, copay, copayments, preexisting conditions, guaranteed issue, premium, PPO, preferred provider organization or any other term that could lead a person to believe the plan is insurance, except in a disclaimer that the plan is not insurance. It can offer only discounted health care services or products that a provider agreement authorizes.

The medical discount plan organization must issue at least one member discount card to each member. The cards must prominently include (1) a statement that the plan is not insurance and (2) the names, logos, or trademarks of any contracted provider network. The medical discount plan organization must provide the names of the networks to members upon request.

Each medical discount plan organization must (1) give the commissioner at least 30 days advance written notice if it changes its name or address, (2) maintain an up-to-date list of its participating providers' names and addresses on an Internet website, and (3) include its website address prominently on all plan material, including member discount cards.

### **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea     19     Nay   0     (03/11/2008)